THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23148 OF 2005

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02.11.2005

Between:

1. Saroji Bai, W/o.Kishtaiah, Kalasiguda, Secunderabad

and others

… Petitioners

AND

1. The Municipal Corporation of Hyderabad, rep. by its

Commissioner, Hyderabad

And others

… Respondents

ORDER:

The petitioners are tenants of premises bearing House No.1-4-229 to 243/1, Kalasiguda, Secunderabad. They assail the notice/order dated 20.10.2005 issued by the Executive Engineer, Division 11, Municipal Corporation of Hyderabad (MCH), Secunderabad directing them to vacate the dilapidated house within twenty four hours to prevent any cause of danger, failing which, the petitioners are informed that the dilapidated house will be pulled down. The petitioners contend that said notice/order is without application of mind, without consideration of the objections filed by the petitioners and in violation of the orders of this Court in W.A.No.1199 of 2004 dated 04.08.2004.

This is for the third time the petitioners have invoked the jurisdiction of this Court under Article 226 of Constitution of India in relation to the same subject matter. The case has a chequered chronology of events which is as follows. On 15.12.2001, Municipal Corporation of Hyderabad, MCH issued a notice under Section 456 of Hyderabad Municipal Corporation Act, 1955 (the Act) directing the petitioners to vacate the house on the ground that the same is in a dangerous and serious condition. The petitioners filed W.P.No.26450 of 2001. This Court disposed of the writ petition on 26.12.2001 directing the petitioners to file their objections treating notice dated 15.12.2001 as pre-demolition notice. The petitioners filed their objections. The Engineering Department inspected the premises and submitted a

report. Based on that, MCH issued another order dated 10.05.2002 directing the petitioners to vacate the premises within seven days. The petitioners then filed an appeal under Section 654 (6) of the Act. The Chief Judge, City Small Causes Court, by order dated 24.03.2004 dismissed the said M.A.No.61 of 2002. Aggrieved by the same, the petitioners filed W.P.No.13078 of 2004, which was dismissed by this Court on 27.07.2004. In W.A.No.1199 of 2004, the Division Bench directed the MCH to hear the petitioners after giving reasonable opportunity of stating their objections and pass appropriate orders in accordance with law. Thereafter, the petitioners submitted objections, allegedly on 20.01.2005 and on 27.01.2005. The MCH again passed orders on 20.10.2005 directing the petitioners to vacate the premises within twenty four hours.

The learned counsel for the petitioners, Sri Vedula Venkata Ramana, made elaborate submissions and taken this Court through the earlier orders of this Court as well as the orders passed by the learned Chief Judge, City Small Causes Court in M.A.No.61 of 2002. It is submitted that the landlords having lost their cases in the Rent Control Court, approached the MCH to evict the petitioners. Though the building is in a good condition, MCH has issued the notice without conducting any enquiry and without giving any reasonable opportunity to the petitioners, as directed by the Division Bench of this Court in W.A.No.1199 of 2004.

The learned Standing Counsel for MCH has produced the relevant file. It is submitted that Engineering Department inspected the premises again in due consideration of the objections filed by the petitioners and submitted a report and based on the said report, the impugned order was passed as there is an imminent threat to the lives of the inhabitants.

From a narration of the chronology of events, as above, it becomes clear that MCH initiated action in relation to the building premises bearing No.1-4-229 to 243/1 even in December, 2001. Therefore, it is not possible to accept the submission that at the behest of the landlords who lost Rent Control cases, the MCH has initiated action. As seen from the order passed in W.P.No.13078 of 2004 dated 27.07.2004, when the MCH initiated action against the petitioners who are occupying the dilapidated building, Rent Control cases were pending. Even while the Rent Control cases were pending, which were allegedly disposed of subsequently, the MCH initiated action and therefore it cannot be said that the landlords are behind the MCH in taking action as per Section 456 of the Act. Be it noted under Section 456 of the Act, irrespective of the pendency of Rent Control litigation or pendency of the suit, if it appears to the Commissioner that any structure of any building is in a ruinous condition so as to prevent injury to the people in the neighbourhood as well as the occupants of the people, the Commissioner may require the owner to pull down the structure. When the building is in possession of the tenants, who will be interested to continue to occupy the building, it might be possible for the Commissioner to issue a notice to the occupants to vacate the premises without first requiring the owner to pull down the building. Such a course of action is permissible under sub Section (3) of Section 456 of the Act, which lays down that there is an imminent fall down of a structure, which is ruinous, the Commissioner may before giving notice or if a notice is already issued before the expiry of period of notice, take action to arrest the

danger. Directing the tenants who are occupying the ruinous structure is certainly a step towards arrest of a danger to human life.

A copy of the representation/objection petition dated 27.01.2005 is annexed to the writ petition. The said representation would show that the petitioners were informed of the enquiry scheduled on 27.01.2005 and the petitioners themselves sought to postpone the enquiry by two weeks. They also informed the Additional Commissioner of MCH that the petitioners would like to examine witnesses in support of the objections. A perusal of the file placed before this Court would show that after receiving copy of the order in Writ Appeal No.1199 of 2004, an enquiry/hearing was conducted on 04.01.2005 in the Chambers of the City Planner, MCH, Secunderabad, that second hearing was conducted on 20.01.2005 and that third hearing was conducted on 27.01.2005. During the enquiry, the owners and tenants requested to give opportunity for another hearing and the same may be conducted on 14.02.2005. The Chief City Planner accordingly proposed to conduct another hearing on 14.02.2005. However, on 28.01.2005, the Additional Commissioner, MCH, Secunderabad, passed orders directing to obtain the opinion of Executive Engineer as tenants objected for demolition of the building. The file was then circulated to Engineering Wing. The report submitted by the Engineering Department reads as under.

> The entire houses are constructed in mud mortor only and are situated at very low level when compared to the upper limit of storm water flow at Kalasiguda Nala which is passing very nearer to these houses, due to which dampness occurs frequently to these houses. All of these houses are constructed on weak foundations. It has been observed that the part of house bearing MCH No.1-4-237 which is located at South-East corner is already collapsed. Some of the residents are attending minor repairs which may not useful to improve structural stability as the foundations are is very weak condition. Being the old age construction, walls in mud mortor are weakened.
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> As such of the above reasons and facts it is submitted that there is no structural stability to the entire premises bearing with numbers 1-4-229 to 243/1 even though minor repairs are attending to some of the houses, which may cause very danger not only to the inmates and also to the pedestrians and hence they may be demolished.

After obtaining the opinion of the Standing Counsel, the Additional Commissioner passed orders directing the Executive Engineer to take up demolition of the dilapidated building. Though said order was passed on 05.08.2005, the Executive Engineer issued the impugned notice on 20.10.2005.

After perusing the file and also the objections raised by the petitioners, this Court does not find any illegality or arbitrariness in the decision making process of respondents herein. The enquiry was conducted on 04.01.2005, 20.01.2005 and 27.01.2005. The petitioners unusually sought time for leading evidence before the Additional Commissioner. Such a course of action is not contemplated under the provisions of the Act. Ultimately, it is the objective opinion of the authorities, which is

required for taking action under Section 456 of the Act. Before doing so, the authorities obtained the opinion of the Executive Engineer and his staff, who unanimously opined that there is a imminent threat of the building falling down and that already a portion of the building was fallen down. It was also noticed that the entire building is situated at a low level when compared to the upper limit of storm water flow of Kalasiguda Nala, as a result of which, dampness occurs in the houses and that there is no structural stability to the entire premises. The impugned notice, therefore, does not in any manner suffer from any vice.

The writ petition, for the above brief reasons, is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

.11.2005.

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